

**FILED**

IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
AT NASHVILLE

2004 NOV -1 PM 3:38

U.S. DISTRICT COURT  
MIDDLE DISTRICT OF TN

SENTINEL TRUST COMPANY, )  
DANNY N. BATES, CLIFTON T. BATES, )  
HOWARD H. COCHRAN, BRADLEY S. )  
LANCASTER, and GARY L. O'BRIEN, )

Plaintiffs, )

v. )

USDC No. 3:04-0836

KEVIN P. LAVENDER, Commissioner )  
of the Tennessee Department of Financial )  
Institutions, )

Judge Nixon

Defendant. )

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**DEFENDANT'S MOTION TO DISMISS**

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Defendant, Kevin P. Lavender, Commissioner of the Tennessee Department of Financial Institutions, respectfully moves this Court to dismiss Plaintiffs' Complaint and Amended Complaint for lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(1) and (6).

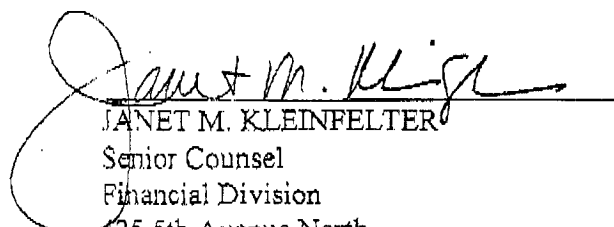
The fundamental basis of Plaintiffs' complaint is their assertion that the Commissioner lacks the necessary authority under state law to take possession and liquidate a state-chartered trust company. Although Plaintiffs have tried to disguise this argument in the garb of a § 1983 cause of action, it is still the same argument that they made in an ongoing state court proceeding, and that was fully rejected by the state trial court. As such, this Court lacks jurisdiction to review

this decision under the *Rooker-Feldman* doctrine. This Court further lacks jurisdiction under 42 U.S.C. § 1983, as Plaintiffs have failed to demonstrate that the available state remedies, i.e., the ongoing state court proceeding, as well as an ongoing contested case hearing under Tennessee's Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301, *et seq.*, are inadequate to redress their alleged due process violations. Finally, even if this Court does have subject matter jurisdiction, Plaintiffs' argument that the Commissioner acted illegally or in excess of his jurisdiction when he took possession of Sentinel Trust Company, and subsequently determined to liquidate the company is without merit, as it is contrary to the express language of the Tennessee Banking Act and the intent of the Tennessee General Assembly.

In support of his motion to dismiss, the Commissioner relies upon his previously filed Response to Plaintiffs' Request for Injunctive Relief.

Respectfully submitted,

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